

**SENSITIVE**

**FEDERAL ELECTION COMMISSION**  
999 E Street, N.W.  
Washington, D.C. 20463

2016 FEB 17 AM 9:00

**FIRST GENERAL COUNSEL'S REPORT**

MUR 6970

DATE COMPLAINT FILED: October 1, 2015

DATES SUPPLEMENTAL COMPLAINTS

FILED: November 19, 2015, December 8, 2015,

January 12, 2016, and January 14, 2016

DATE OF LAST RESPONSE: December 15, 2015

DATE ACTIVATED: November 18, 2015

EXPIRATION OF SOL: September 14, 2020  
(estimate)

ELECTION CYCLE: 2016

**COMPLAINANT:**

Andrew Straw

**RESPONDENTS:**

Peter DiCianni

DiCianni for DuPage County Board

Pete for Congress and Paul Kilgore in his  
official capacity as treasurer

**RELEVANT STATUTES  
AND REGULATIONS:**

52 U.S.C. § 30102(e)(1)<sup>1</sup>

52 U.S.C. § 30103(a)

52 U.S.C. § 30104(b)

52 U.S.C. § 30118

52 U.S.C. § 30125(e)

11 C.F.R. § 101.1(a)

11 C.F.R. § 101.3

11 C.F.R. § 102.1

**INTERNAL REPORTS CHECKED:**

Disclosure reports

**FEDERAL AGENCIES CHECKED:**

None

**I. INTRODUCTION**

This matter arises from allegations that Peter DiCianni, a sitting member of the DuPage Illinois County Board, used impermissible funds from his Illinois local political committee, DiCianni

<sup>1</sup> On September 1, 2014, the Federal Election Campaign Act of 1971, as amended (the "Act"), was transferred from Title 2 to new Title 52 of the United States Code.

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1 for DuPage County Board ("local committee"), to support his federal candidacy in the Republican  
2 primary for U.S. Representative in Illinois's 8th Congressional District; and that DiCianni failed to  
3 file a timely declaration of candidacy or required disclosure reports after his local political  
4 committee raised more than \$5,000 to support his federal campaign.

5 While Respondents generally deny that any of the local committee's fundraising or  
6 disbursements were in connection with DiCianni's federal candidacy, they offer no explanation for a  
7 \$500 disbursement by the local committee that appears to have funded a sponsorship of a  
8 community picnic on behalf of DiCianni's 2016 federal campaign. Because the local committee  
9 accepted funds from prohibited corporate and union sources, this \$500 payment appears to constitute  
10 a prohibited contribution to DiCianni's federal committee. This Office, however, has no information  
11 indicating that Respondents raised or spent any other impermissible funds in connection with the  
12 federal campaign, or that DiCianni attained candidate status by raising or spending \$5,000 in  
13 connection with his federal campaign prior to his declaration of candidacy.

14 Given that the potential violations in this matter appear to be limited to the single \$500  
15 payment, we recommend that the Commission exercise its prosecutorial discretion to dismiss the  
16 allegations that DiCianni for DuPage County Board made, and that Peter DiCianni and Pete for  
17 Congress accepted and failed to report, a prohibited contribution, and issue a letter of caution. We  
18 recommend that the Commission find no reason to believe that Peter DiCianni or Pete for Congress  
19 failed to disclose funds received or payments made for testing-the-waters purposes. Finally, we  
20 recommend that the Commission find no reason to believe that Peter DiCianni violated the Act by  
21 failing to timely register and report as a candidate, and no reason to believe that Pete for Congress  
22 and Paul Kilgore in his official capacity as treasurer violated the Act by failing to timely register as a  
23 principal campaign committee.

1    **II.    FACTUAL BACKGROUND**

2            Peter DiCianni is a DuPage County Board Member in DuPage County, Illinois, whose  
3    term expires in 2018. DiCianni for DuPage County Board is an Illinois local political committee  
4    that supports DiCianni's candidacy for local office.

5            The Complaint alleges that, at DiCianni's request, the Complainant and DiCianni met on  
6    June 19, 2015, and that at this meeting DiCianni expressed interest in entering Illinois's 8th  
7    Congressional District race, suggested that the Complainant drop out of the race, and said that he  
8    had the support of several mayors in the district.<sup>2</sup> DiCianni publicly announced that he was  
9    running in the 8th Congressional District race on September 13, 2015.<sup>3</sup> DiCianni filed with the  
10   Commission a Statement of Candidacy and a Statement of Organization designating Pete for  
11   Congress as his principal campaign committee on October 7, 2015. Pete for Congress's initial  
12   disclosure report, the January 31, 2016 Year End Report, shows that the first receipts and  
13   disbursements in connection with DiCianni's federal campaign occurred in October 2015.

14           The Complaint alleges that DiCianni for DuPage County Board received donations from  
15   corporations, banks, and at least one union between June 2015, when Complainant asserts he  
16   became aware that DiCianni was testing the waters for a federal candidacy, and September 2015,  
17   when DiCianni announced his federal candidacy.<sup>4</sup> The Complaint alleges that DiCianni was not  
18   running for local office during this period and that the funds that the local committee was raising  
19   and spending were to support DiCianni's federal candidacy. Complainant alleges that DiCianni

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<sup>2</sup>        Compl. at 1.

<sup>3</sup>        Compl. at 1; Resp. at 1.

<sup>4</sup>        Compl. at 2.

1 donated these impermissible funds to various political groups that now support his congressional  
2 candidacy, and that he used these funds for robocalls in support of his federal campaign.<sup>5</sup>

3 In his Response, DiCianni asserts that he uses DiCianni for DuPage County Board to  
4 "promote [his] county office and support fellow local officials and local organizations," and that  
5 this committee has not provided funds for DiCianni's congressional bid.<sup>6</sup> DiCianni explains that  
6 DiCianni for DuPage County Board received donations from various entities through September  
7 2015 after he hosted an annual golf outing for his county seat in June 2015,<sup>7</sup> that his first  
8 fundraiser for the congressional race was scheduled for October 21, 2015, and that he had not  
9 raised or spent more than \$5,000 on his federal campaign as of October 14, 2015.<sup>8</sup>

10 In a First Supplemental Complaint, the Complainant alleged that DiCianni began "testing  
11 the waters" for a congressional bid on June 19, 2015.<sup>9</sup> The Complainant also alleged that  
12 DiCianni's local committee raised over \$5,000 prior to June 30, 2015 and over \$5,000 during the  
13 third quarter.<sup>10</sup> The Complainant attached as evidence of this fundraising the quarterly reports  
14 that DiCianni for DuPage County Board filed with the Illinois State Board of Elections.<sup>11</sup> The  
15 Complainant further alleged that DiCianni paid \$500 for a tent at the 35th Annual Northwest

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<sup>5</sup> *Id.* at 3.

<sup>6</sup> Resp. at 1. The Office of the General Counsel ("OGC") did not receive responses from DiCianni for DuPage County Board or from Pete for Congress and Paul Kilgore in his official capacity as treasurer.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> First Supp. Compl. at 1.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* Attachs. 1 and 3.

1 Suburban Republican Family Picnic, the sponsorship webpage of which lists DiCianni's federal  
2 campaign logo.<sup>12</sup>

3 In a Response to the First Supplemental Complaint, DiCianni reiterated that he did not  
4 use funds from DiCianni for DuPage County Board for his congressional bid.<sup>13</sup> DiCianni stated  
5 that the robocalls mentioned by the Complainant notified the public about an annual run  
6 sponsored by a local autism charity, made no mention of DiCianni's candidacy, and occurred  
7 prior to DiCianni's declaration of candidacy.<sup>14</sup> DiCianni also stated that DiCianni for DuPage  
8 County Board accepted the corporate, bank, and union donations described in the Complaint for  
9 a June golf event hosted by DiCianni.<sup>15</sup> Additionally, DiCianni claimed that, when meeting the  
10 Complainant in June 2015, he did not ask the Complainant to leave the race and did not state to  
11 the Complainant that he was a candidate but instead expressed to the Complainant that he was  
12 "considering running" and "was taking the temperature of local elected officials."<sup>16</sup> The  
13 Response does not address the allegation that the local committee made a \$500 disbursement for  
14 an event that listed DiCianni's federal campaign as a sponsor.

15 In a Second Supplemental Complaint, the Complainant restated his allegations and  
16 further alleged that DiCianni fraudulently used his local campaign logo and funds once he had  
17 announced his federal candidacy.<sup>17</sup> In a Response to the Second Supplemental Complaint,

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<sup>12</sup> *Id.* at 2 & Attach. 2.

<sup>13</sup> Resp. to First Supp. Compl. at 1.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Second Supp. Compl. at 1.

1 DiCianni restated his claims from his previous Responses and stated that his first federal  
2 fundraiser occurred in October 2015.<sup>18</sup>

3 **III. LEGAL ANALYSIS**

4 **A. Prohibited Contributions**

5 The Act prohibits any candidate, political committee, or other person from knowingly  
6 accepting or receiving contributions from corporations, banks, and labor organizations.<sup>19</sup> A  
7 contribution includes any "direct or indirect payment, distribution, loan, advance, deposit, or gift  
8 of money, or any services, or anything of value" made in connection with a Federal election.<sup>20</sup>  
9 The Commission's regulations interpret the term "anything of value" to include all in-kind  
10 contributions.<sup>21</sup>

11 In this matter, the Complaint alleges that DiCianni for DuPage County Board accepted  
12 contributions from corporations, banks, and labor organizations — which is permissible under  
13 Illinois state law — and that DiCianni used these funds in support of his federal candidacy in  
14 violation of the Act. The Complaint provides two examples of expenditures made by the local  
15 committee that are allegedly related to DiCianni's federal campaign and would thus constitute  
16 impermissible contributions to DiCianni and Pete for Congress: (1) robocalls,<sup>22</sup> and (2) a

<sup>18</sup> Resp. to Second Supp. Compl. at 1. The Complainant submitted two additional supplemental complaints on January 12, 2016, and January 14, 2016, neither of which alleged new violations under the Act or named new respondents.

<sup>19</sup> 52 U.S.C. § 30118(a); *see* 11 C.F.R. § 114.2(d) (same).

<sup>20</sup> 52 U.S.C. § 30118(b)(2) (does not include a loan of money by a bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business); *see id.* § 30101(8)(A).

<sup>21</sup> 11 C.F.R. § 100.52(d)(1).

<sup>22</sup> Compl. at 3.

1 sponsorship of the 35th Annual Northwest Suburban Republican Family Picnic.<sup>23</sup> With regard to  
2 the first allegation, DiCianni claims that the robocalls related to a walk for an autism charity with  
3 which he works, and that the calls did not mention his candidacy.<sup>24</sup> This Office has no evidence  
4 suggesting that these calls in fact related to DiCianni's federal candidacy.

5 Regarding the second allegation, which Respondents have not addressed, it appears that  
6 DiCianni for DuPage County Board paid \$500 to the 35th Annual Northwest Suburban  
7 Republican Family Picnic, and that the organization advertised on its webpage that DiCianni's  
8 federal campaign was a sponsor of the picnic.<sup>25</sup> Because the federal campaign is credited as a  
9 sponsor of the picnic, it appears to have received a benefit from the disbursement by the local  
10 political committee. Accordingly, that \$500 disbursement appears to constitute a prohibited  
11 contribution.

12 Given the relatively *de minimis* amount associated with the violations, however, and in  
13 furtherance of the Commission's priorities and resources, relative to other matters pending on the  
14 Enforcement docket, this Office believes that the Commission should exercise its prosecutorial  
15 discretion and dismiss these alleged violations, but issue a letter of caution.<sup>26</sup> Accordingly, this  
16 Office recommends that the Commission dismiss the allegations that DiCianni for DuPage  
17 County Board violated 52 U.S.C. §§ 30118 and 30125(e) by making a prohibited contribution  
18 with nonfederal funds and that Peter DiCianni and Pete for Congress and Paul Kilgore, in his

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<sup>23</sup> First Supp. Compl. at 2 & Attach. 2.

<sup>24</sup> Resp. to First Supp. Compl. at 1.

<sup>25</sup> The picnic was held on September 13, 2015, on the same day as DiCianni's announcement of his congressional candidacy.

<sup>26</sup> See *Heckler v. Cheney*, 470 U.S. 821 (1985). See also Factual & Legal Analysis at 3, MUR 6809 (Kultala for Congress, *et al.*) (finding that the alleged impermissible contribution of \$1,000 was *de minimis* and warranted dismissal).

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1 official capacity as treasurer, violated 52 U.S.C. §§ 30118 and 30125(e) by accepting a  
2 prohibited contribution, and that the Commission issue a letter of caution to these Respondents  
3 regarding the impermissible \$500 in-kind contribution and their obligation to refund the  
4 contribution amount.

5 **B. Reporting Violations**

6 **1. Failure to Report Campaign Expenditures**

7 Under the Act, authorized committees must file reports disclosing, *inter alia*, all  
8 disbursements.<sup>27</sup> In addition, every person other than a political committee that makes  
9 independent expenditures in an aggregate amount that exceeds \$250 during a calendar year must  
10 file a statement disclosing them.<sup>28</sup>

11 In this matter, the Complainant alleged that DiCianni raised, but failed to report, over  
12 \$5,000 prior to June 30, 2015, and over \$5,000 during the third quarter of 2015.<sup>29</sup> Given the  
13 quarterly reports attached to the First Supplemental Complaint, it appears that the Complainant is  
14 referring to funds raised by DiCianni for DuPage County Board. As discussed above, it appears  
15 that the only disbursement that DiCianni for DuPage County Board made in connection with  
16 DiCianni's federal candidacy was the \$500 picnic sponsorship. Given the relatively *de minimis*  
17 amount associated with this reporting violation, and in furtherance of the Commission's priorities  
18 and resources, this Office believes that the Commission should exercise its prosecutorial  
19 discretion and dismiss the alleged violation of 52 U.S.C. § 30104(b) as to DiCianni for DuPage

<sup>27</sup> See 52 U.S.C. § 30104(b)(4)(G) (requiring authorized committees to disclose all other disbursements); see also *id.* § 30104(b)(6)(A), (B)(iii) (requiring political committees to identify persons receiving disbursements generally and those in connection with independent expenditures aggregating in excess of \$200 within the calendar year and describing other specific content requirements).

<sup>28</sup> *Id.* § 30104(c).

<sup>29</sup> First Supp. Compl. at 1.



1 County Board, Peter DiCianni, and Pete for Congress and Paul Kilgore in his official capacity as  
2 treasurer.<sup>30</sup>

3 2. Failure to Report Testing-the-Waters Expenditures

4 Pursuant to the Commission's regulations, individuals who conduct certain activities to  
5 evaluate a potential candidacy (*i.e.*, to "test the waters") must disclose any such funds received or  
6 payments made for this purpose on the first disclosure report filed by the candidate's authorized  
7 committee.<sup>31</sup> The regulations define testing the waters as those activities "conducted to  
8 determine whether an individual should become a candidate," and include, but are not limited to,  
9 polling, telephone calls, and travel.<sup>32</sup>

10 The Complaint and Supplemental Complaints contain only conclusory assertions that  
11 DiCianni began "testing the waters" for a congressional bid on June 19, 2015.<sup>33</sup> The  
12 Complainant's sole specific allegation in the Complaint and Supplemental Complaints that  
13 DiCianni conducted testing-the-waters activities with prohibited funds related to the claim that  
14 DiCianni used his local committee to pay for robocalls to test the waters for his expected federal  
15 campaign.<sup>34</sup> As discussed above, however, this Office has no information that credibly suggests  
16 that these calls were made for testing-the-waters purposes.<sup>35</sup> Accordingly, we recommend that

<sup>30</sup> See *Heckler v. Cheney*, 470 U.S. 821 (1985).

<sup>31</sup> See 11 C.F.R. §§ 100.72(a), 100.131(a); 11 C.F.R. § 101.3. See also Explanation and Justification for Final Rules of Payments Received for Testing the Waters Activities, 50 Fed. Reg. 9592 (Mar. 13, 1985); Explanation and Justification to the Disclosure Regulations, House Doc. No. 95-44, Communication from the Chairman, FEC, Transmitting the Commission's proposed Regulations Governing Federal Elections, at 40 (Jan. 12, 1977).

<sup>32</sup> 11 C.F.R. §§ 100.72(a), 100.131(a).

<sup>33</sup> First Supp. Compl. at 1.

<sup>34</sup> Compl. at 3.

<sup>35</sup> See *supra* at Part III.A.

1 the Commission find no reason to believe that DiCianni or Pete for Congress and Paul Kilgore in  
2 his official capacity as treasurer failed to disclose funds received or payments made for testing-  
3 the-waters purposes in violation of 52 U.S.C. § 30104(b) and 11 C.F.R. § 101.3.

4 **C. Candidate Status**

5 An individual becomes a candidate for federal office when he or she has received  
6 contributions or made expenditures in excess of \$5,000.<sup>36</sup> Upon becoming a candidate, an  
7 individual has fifteen days to file a Statement of Candidacy (FEC Form 2), and on that form,  
8 designate a political committee that will serve as the candidate's principal campaign  
9 committee.<sup>37</sup> The principal campaign committee then has ten days to file a Statement of  
10 Organization (FEC Form 1).<sup>38</sup> This Office has no available evidence indicating that DiCianni  
11 either received contributions or made expenditures exceeding \$5,000 before his official  
12 declaration of candidacy in September 2015.

13 Accordingly, we recommend that the Commission find no reason to believe that DiCianni  
14 violated 52 U.S.C. § 30102(e)(1) or 11 C.F.R. § 101.1(a) for failing to timely register and report  
15 as a candidate, or that Pete for Congress and Paul Kilgore in his official capacity as treasurer  
16 violated 52 U.S.C. § 30103(a) or 11 C.F.R. § 102.1 for failing to timely register as a principal  
17 campaign committee.

18 **IV. RECOMMENDATIONS**

- 19 1. Dismiss the allegation that DiCianni for DuPage County Board violated 52 U.S.C.  
20 §§ 30104(b), 30118, and 30125(e).

<sup>36</sup> 52 U.S.C. § 30101(2); 11 C.F.R. § 100.3(a).

<sup>37</sup> 52 U.S.C. § 30102(e)(1); 11 C.F.R. § 101.1(a).

<sup>38</sup> 52 U.S.C. § 30103(a); 11 C.F.R. § 102.1.

2. Dismiss the allegations that Peter DiCianni or Pete for Congress and Paul Kilgore in his official capacity as treasurer violated 52 U.S.C. §§ 30104(b), 30118, and 30125(e).
3. Find no reason to believe that Peter DiCianni or Pete for Congress and Paul Kilgore in his official capacity as treasurer violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 101.3 for failure to report testing-the-waters expenditures.
4. Find no reason to believe that Peter DiCianni violated 52 U.S.C. § 30102(e)(1) or 11 C.F.R. § 101.1(a).
5. Find no reason to believe that Pete for Congress and Paul Kilgore in his official capacity as treasurer violated 52 U.S.C. § 30103(a) or 11 C.F.R. § 102.1.
6. Approve the attached Factual and Legal Analysis.
7. Approve the appropriate letters.
8. Close the file.

2/16/2016

Date

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